

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 21, 27 and 36 are currently being amended.

Claims 21, 27 and 36 are amended to correct typographical errors. No new matter is added. Applicant respectfully submits that the amendments to claims 21, 27 and 36 are non-narrowing amendments and that claims 21, 27 and 36 are eligible for the full scope of the doctrine of equivalents. The amendments to claims 21, 27 and 36 are not made to overcome the prior art.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claims remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 21-40 remain pending in this application.

In paragraphs 1 and 2 of the Office Action, claims 21-40 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatenable over claims 21-26 of U.S. Patent No. 6,672,079 in view of U.S. Patent No. 4,052,180 (Erickson). The Examiner states:

Claims 21-26 of U.S. Patent No. 6,672,079 claim the same invention as the claims of the application except for the recitation of the cylindrical evaporator and cooling chamber. Erickson teaches an ice cream maker using a cylindrical evaporator and cooling chamber. It would be obvious to modify the patented claims 21-26 so that the claimed evaporator and cooling chamber are cylindrical, in view of Erickson, for the purpose of providing an easy way to remove the frozen ice cream from the cooling chamber.

Applicant respectfully traverses the rejection.

However, to advance prosecution, Applicant has provided herewith a Terminal Disclaimer. Accordingly, withdrawal of the rejection of claims 21-40 is respectfully requested.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. § 1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Respectfully submitted,

Date 2-15-05

FOLEY & LARDNER LLP
Customer Number: 26371
Telephone: (414) 297-5768
Facsimile: (414) 297-4900

By Joseph N. Ziebert
Joseph N. Ziebert
Attorney for Applicant
Registration No. 35,421